



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Misener Marine Construction, Inc.

File: B-258205

Date: December 20, 1994

DECISION

Misener Marine Construction, Inc. protests the award of a contract to Hardaway Company, under invitation for bids (IFB) No. DACW64-94-B-0033, issued by the Department of the Army.

We dismiss the protest.

The agency issued the IFB on May 31, 1994, seeking bids for a firm, fixed-price construction contract to replace certain guidewalls on the Gulf Intercoastal Waterway. The solicitation included the "Buy American Act--Construction Materials" clause at Federal Acquisition Regulation (FAR) § 52.225-5, and the "Buy American Act--Construction Materials under European Community and North American Free Trade Agreements" clause at FAR § 52.225-15. Amendment No. 3 instructed bidders to append a note to the "Buy American Act--Construction Materials" clause at FAR § 52-225-5, which states that the Buy American Act does not apply if the estimated acquisition value of the contract is \$6,500,000 or more. This note was later moved and appended to the "Buy American Act--Construction Materials under European Community and North American Free Trade Agreements," by amendment No. 4.

The agency received 10 bids by the July 14 extended bid opening date. The agency awarded a contract on August 10, to Hardaway, the low bidder, at \$4,290,070. This protest to our Office followed.

The protester argues that the agency was operating under the mistaken assumption that the Buy American Act did not apply to this procurement, when it determined that Hardaway's bid was responsive. The protester's contention is based solely on its August 10 conversation with James Brown, an agency employee, who, allegedly informed the protester that the agency considered the Buy American Act inapplicable to this solicitation. Misener infers from this comment that

Hardaway proposed to use foreign materials, in contravention of the Buy American Act, and that the agency nonetheless determined that Hardaway's bid was responsive by determining that the Act did not apply. The agency responds that Mr. Brown is not the contracting officer or the authorized representative of the contracting officer. The agency agrees that the Buy American Act applies to this procurement. It states that Hardaway's bid made no exception to the Act and was therefore properly determined to be responsive.

Bid protests are serious matters which require effective and equitable procedural standards assuring a fair opportunity to have objections considered consistent with the goal of not unduly disrupting the procurement process. Diemaster Tool Inc.--Recon., 70 Comp. Gen. 339 (1991), 91-1 CPD ¶ 304. To that end, our Bid Protest Regulations require that protests include a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c)(4) (1994), and that the grounds stated be legally sufficient, 4 C.F.R. § 21.1(e). In this regard, a protester's unsupported allegations, which amount to mere speculation, are insufficient to form a basis for protest. Medical Serv. Corp. Int'l, B-252801, Apr. 19, 1993, 93-1 CPD ¶ 335. Misener's argument that the agency considered the Buy American Act inapplicable is based solely on the inaccurate comments of an unauthorized agency individual. Misener's speculation, based on such comments, is inadequate to form a basis of protest and we, therefore, dismiss the protest.

To the extent that the protester argues that the agency erroneously included FAR § 52.225-15, in the solicitation, its argument is untimely. Our Bid Protest Regulations require that protests based upon alleged improprieties in an IFB which are apparent prior to the bid opening time be filed prior to that time. 4 C.F.R. § 21.2(a). The purpose of this rule is to enable our Office to review such matters in time to recommend effective action, such as amending the solicitation, where appropriate. The Jorgensen Forge Corp., B-255426, Feb. 28, 1994, 94-1 CPD ¶ 157. A bidder may not participate in a procurement and then wait until after it is not selected for award to protest alleged improprieties fully disclosed in the solicitation.

The protest is dismissed.



Paul E. Jordan
Acting Assistant General Counsel